

**CHAPTER NO. 204**

**SENATE BILL NO. 503**

**By Henry, McNally**

**Substituted for: House Bill No. 120**

**By Fitzhugh**

AN ACT to amend Tennessee Code Annotated, Sections 5-1-310, 8-34-620, 8-35-218, 8-35-219, 8-35-403, 8-36-121, 8-36-205, 8-36-211, 8-36-503, 8-36-504, 8-36-802, 8-36-809, 8-37-214 and 26-2-105(a), relative to pensions and compensation programs for public officers and employees.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 8-35-218, is amended by designating the existing language as subsection (a) and by adding the following as a new subsection (b) at the end thereof:

(b) Upon giving at least one (1) year's advance notice in writing to the board of trustees, a hospital, nursing home, transit authority, utility, or other instrumentality which operates under the direction of its own governing board and which is not subject to the general control and administration of the chief legislative body of the political subdivision may terminate, effective June 30 of the calendar year following the end of the notice period, its participation in the retirement system. To terminate such participation, the following terms and conditions must be met:

(1) The governing body of the instrumentality and the chief legislative body of the political subdivision shall each submit a resolution approving the withdrawal of the instrumentality from the retirement system. Both resolutions must be adopted by two-thirds (2/3) of the membership of the chief legislative body of the political subdivision and of the governing body of the instrumentality;

(2) Either the instrumentality or the political subdivision may, by resolution legally adopted and approved by its respective governing body, rescind its resolution approving the withdrawal at any time prior to the expiration of the one (1) year notice period;

(3) Upon the effective date of any such withdrawal resolution, the current and future employees of the instrumentality shall be subject to the provisions of subdivisions (a)(4) – (a)(9) of this section;

(4) All employees of the instrumentality that continue membership in the retirement system pursuant to subdivisions (a)(4) or (a)(5), including retired former employees, shall be entitled to benefits according to the plan as it exists for such instrumentality on the date of withdrawal, with the political subdivision being liable for contributions and benefits as provided in subdivisions (a)(11) – (a)(13); and

(5) The political subdivision may elect at a later date to have the instrumentality rejoin the retirement system in accordance with § 8-35-201; provided, that any such resolution to rejoin shall be irrevocable and the instrumentality shall not later be permitted to withdraw under the provisions of this subsection.

SECTION 2. Tennessee Code Annotated, Section 8-35-219(a), is amended by deleting the language immediately after the semicolon “;” and by substituting instead the following:

provided, that any employee of such employer participating in the retirement system by virtue of part-time service shall continue to be eligible for membership in the retirement system.

SECTION 3. Tennessee Code Annotated, Section 8-35-219(b), is amended by deleting the period at the end thereof and by substituting instead the following:

; provided, that any such resolution shall be irrevocable and the employer shall not later be permitted to exclude its part-time employees under the provisions of this section.

SECTION 4. Tennessee Code Annotated, Section 8-34-620, is amended by designating the existing language as subsection (a) and by adding the following as a new subsection (b) at the end thereof:

(b) Notwithstanding subdivision (a)(2), if a member was in a defined contribution plan maintained on behalf of the member by an out-of-state public employer, the member shall be permitted to use other funds not in such plan to establish credit pursuant to this section.

SECTION 5. Tennessee Code Annotated, Section 5-1-310(b), is amended by deleting the words "in the month of July" and by substituting instead the words and figures "by no later than August 31".

SECTION 6. Tennessee Code Annotated, Section 5-1-310(c), is amended by deleting the words "during the month of July" and by substituting instead the words and figures "by no later than August 31".

SECTION 7. Tennessee Code Annotated, Section 5-1-310(d), is amended by deleting from the second sentence thereof the words and figures "August 31" and by substituting instead the words and figures "October 31".

SECTION 8. Tennessee Code Annotated, Section 8-35-403(g), is amended by deleting the same in its entirety and by substituting instead the following:

(g) Notwithstanding any provision of this part or any other law to the contrary, any employee who, on or after January 1, 2005, attains either: (i) five (5) or more but less than six (6) years of creditable service in the optional retirement program or (ii) five (5) or more but less than six (6) years of creditable service in the Tennessee consolidated retirement system and the optional retirement program combined shall have the option of transferring membership from the optional retirement program to the Tennessee consolidated retirement system under the terms and conditions specified in subsection (f) above; provided, however, that the election to transfer and the payment required thereunder shall be made not later than the end of the calendar year following the year the employee completes five (5) years of creditable service.

SECTION 9. Tennessee Code Annotated, Section 8-35-403, is amended by adding the following new subsection at the end thereof:

(h) Notwithstanding any provision of this part or any other law to the contrary, any employee who has, as of January 1, 2005, five (5) or more years of creditable service in the Tennessee consolidated retirement system and the optional retirement program combined shall have the option of transferring membership from the optional retirement program to the Tennessee consolidated retirement system under the terms and conditions specified in subsection (f) above; provided, however, that the election to transfer and the payment required thereunder shall be made by no later than December 31, 2006.

SECTION 10. Tennessee Code Annotated, Section 8-36-121, is amended by adding the following as a new subsection (e) and by redesignating the existing subsection (e) accordingly:

(e) Notwithstanding any provision of this section or any other law to the contrary, if a member has not nominated a beneficiary in the manner provided in subsection (a) above, then at the member's death, the member's surviving spouse shall be deemed the member's beneficiary and the spouse shall be entitled to receive any payments which would otherwise have been payable under the provisions of Chapters 34–37 of this title had the surviving spouse been named the beneficiary. If no such surviving spouse exists upon the member's death, then any lump sum payment due shall be made in accordance with § 8-36-120.

SECTION 11. Tennessee Code Annotated, Section 8-36-121(b), is amended by deleting the word and figures "subsection (e)" and by substituting instead the word and figures "subsection (f)".

SECTION 12. Tennessee Code Annotated, Section 8-36-205(a)(3)(A), is amended by deleting from the second sentence thereof the words and figures "attains sixty-two (62) years of age" and by substituting instead the words and figures "reaches the age requirement for receipt of old age and survivors benefits under Title II of the Federal Social Security Act ( 42 U.S.C. §§ 401-425)".

SECTION 13. Tennessee Code Annotated, Section 8-36-205(a)(3)(B), is amended by deleting the words and figures "sixty (60) years of age" wherever the same appear in Section 8-36-205(a)(3)(B) and by substituting instead the words and figures "the age requirement established by the political subdivision under subdivision (a)(2)".

SECTION 14. Tennessee Code Annotated, Section 8-36-205(a)(3)(B), is further amended by deleting from the second sentence thereof the words and figures "attains sixty-two (62) years of age" and by substituting instead the words and figures "reaches the age requirement for receipt of old age and survivors benefits under Title II of the Federal Social Security Act (42 U.S.C. §§ 401-425)".

SECTION 15. Tennessee Code Annotated, Section 8-36-205(a)(3), is amended by adding the following new subdivision at the end thereof:

(C) Notwithstanding any other provision of the law to the contrary, any member who would otherwise be covered under the mandatory retirement provisions of this section and who serves as the commissioner of the Tennessee department of safety, director of the Tennessee bureau of investigation, the director of the Tennessee wildlife resources agency, or as the chief of a police department or of a fire department may continue in service beyond the age requirement for receipt of old age and survivors benefits under Title II of the Federal Social Security Act (42 U.S.C. §§ 401-425).

SECTION 16. Tennessee Code Annotated, Section 8-36-211(a), is amended by deleting the words and figures "on or after the attainment of sixty (60) years of age".

SECTION 17. Tennessee Code Annotated, Section 8-36-211(b), is amended by deleting the words and figures "on or after the attainment of age sixty (60)".

SECTION 18. Tennessee Code Annotated, Section 8-36-211(f), is amended by adding the following new sentence at the beginning thereof:

The supplemental bridge benefit shall commence on the member's effective date of retirement or on the first day of the month following the month the member reaches age sixty (60), whichever is later.

SECTION 19. Tennessee Code Annotated, Section 8-36-503, is amended by designating the existing language as subsection (a) and by adding the following as a new subsection (b) at the end thereof:

(b) Any member who is approved for a disability retirement allowance may be required to report to the retirement system, on a quarterly basis, the status of any workers' compensation claim filed by the member. The member shall provide a copy of the final workers' compensation settlement or judgment to the retirement system within thirty (30) days after the settlement or judgment becomes final. Failure to comply with the requirements of this subsection may result in the suspension of the member's retirement allowance.

SECTION 20. Tennessee Code Annotated, Section 8-36-504, is amended by adding the following new subsection at the end thereof:

(c)(1) Except as provided in subsection (c)(4), the board of trustees may, at its discretion, accept a disability medical determination from the Social Security Administration in lieu of referring the matter to the medical board for certification.

(2) If the board of trustees elects to accept such a disability medical determination, the member shall submit to the retirement system all the medical and other evidence used by the Social Security Administration to evaluate the member's application for Social Security disability benefits. Such records shall be submitted within twelve (12) months from the date the member's application for disability retirement benefits is approved by the board. Should the member fail to provide such records within the 12-month period and should such failure continue for ninety (90) days after the records have been requested, the member's monthly retirement benefit may be suspended.

(3) Any member retired by the board of trustees on a disability retirement allowance pursuant to this subsection shall not be relieved from the provisions of §§ 8-36-506 – 8-36-508.

(4) This subsection (c) shall only apply to determinations of disability made pursuant to 20 CFR § 404.902 and 20 CFR § 404.920 as in effect on January 19, 2005.

SECTION 21. Tennessee Code Annotated, Section 8-36-802 (e)(2), is amended by deleting the third sentence thereof and by substituting instead the following:

The benefits shall be recomputed under such plan based on the total service and salary credit accrued by the retiree both before and after the retiree's previous retirement, unless such recomputation results in the retiree receiving a lower retirement allowance than the retiree would have received under that plan prior to restoration to service. If the recomputation results in a lower allowance, then the retiree's retirement allowance under the payment plan elected upon subsequent retirement shall be computed pursuant to subsection (e)(1).

SECTION 22. Tennessee Code Annotated, Section 8-36-809, is amended by adding the following at the end thereof:

The provisions of this section only apply to employment with local governmental entities including, but not limited to, any municipality, metropolitan government, county, utility district, school district, public building authority, and development district created and existing pursuant to the laws of Tennessee, or any instrumentality of government created by any one (1) or more of the named local governmental entities or by an act of the general assembly.

SECTION 23. Tennessee Code Annotated, Section 8-37-214(a), is amended by deleting subdivisions (1) and (2) thereof and by substituting instead the following:

(1) A back payment shall be equal to the amount of contributions such member would have made had such member been a member of the state retirement system during the period claimed, plus interest compounded annually from the date the contributions would have been made to the date of payment.

(2) A redeposit shall be equal to the total amount that was previously withdrawn, plus interest compounded annually from the date of withdrawal to the date of payment.

(3) The rate of interest to be used under this section shall be the assumed actuarial interest rate of return established by the board of trustees under § 8-34-505 at the time the payment is made.

SECTION 24. Tennessee Code Annotated, Section 8-37-214(c), is amended by deleting the same in its entirety and by substituting instead the following:

(c) Except for payments previously made to establish retirement credit under Chapters 34-37 of this title and for payments being made through monthly installments pursuant to § 8-37-220 on the effective date of this act, the interest rate as provided for under this section shall have application in all cases where a different rate of interest was provided for in making back payments or redeposits.

SECTION 25. Tennessee Code Annotated, Section 26-2-105(a), is amended by deleting the words and punctuation "by a resident of the state," and by further deleting the word "resident's" and by substituting instead the word "recipient's".

SECTION 26. Chapter 905 of the Public Acts of 2004, is amended by deleting Section 6 thereof in its entirety.

SECTION 27. This act shall take effect upon becoming a law, the public welfare requiring it.

**PASSED: May 5, 2005**

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

**APPROVED this 23<sup>rd</sup> day of May 2005**

  
PHIL BREDESEN, GOVERNOR